

1 Chad S. Hummel (SBN 139055)
chummel@sidley.com
2 Amanda R. Farfel (SBN 288126)
afarfel@sidley.com
3 SIDLEY AUSTIN LLP
1999 Avenue of the Stars
4 17th Floor
Los Angeles, CA 90067
5 Telephone: +1 310 595 9505
Facsimile: +1 310 595 9501

6 Katherine A. Roberts (SBN 259486)
kate.roberts@sidley.com
7 SIDLEY AUSTIN LLP
8 555 West Fifth Street, Suite 4000
Los Angeles, CA 90013
9 Telephone: +1 213 896 6000
Facsimile: +1 213 896 6600

10
11 Attorneys for Plaintiff
ELON SPAR

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES

15 ELON SPAR,

16 Plaintiff,

17 v.

18 RYAN KAVANAUGH, and
DOES 1-10, inclusive,

19 Defendants.

Case No.

Assigned to:

**VERIFIED COMPLAINT AGAINST RYAN
KAVANAUGH FOR:**

(1) FRAUD

**(2) VIOLATION OF CAL. BUS. &
PROF. CODE § 17200 *et seq.***

(3) DECLARATORY RELIEF

20
21
22
23 **SUMMARY OF ACTION**

24 1. This is an action for fraud against Defendant Ryan Kavanaugh ("Kavanaugh"), a
25 notorious Hollywood executive who presided over the highly publicized financial failures and
26 bankruptcies of Relativity Media.
27
28

1 2. This case involves Kavanaugh's recent attempts to re-enter the world of film
2 finance, which he has sought to achieve through a myriad of misrepresentations and outright lies --
3 both public and private, including in multiple recent public press releases and interviews.
4 Kavanaugh's lies have been purposefully designed to lure people under false pretenses into
5 investing or participating in his new purported business ventures, including a company called
6 Proxima Media, LLC ("Proxima"), and several Kavanaugh-controlled affiliates -- Centauri Media
7 LLC and Proxicon LLC.

8 3. Among others defrauded by Kavanaugh was Plaintiff Elon Spar ("Spar"). Spar
9 enjoyed a long and successful career at the global financial firms Credit Suisse and Cantor
10 Fitzgerald. At Cantor Fitzgerald, Spar worked to, among other things, transform the virtual game
11 Hollywood stock exchange ("HSX") into a real money exchange (the concept for which had been
12 in existence for many years).

13 4. Spar had been working on the concept of a Hollywood real money exchange since at
14 least 2016. The concept would allow investors to participate in the financial performance of films.
15 Spar was in the process of meeting with potential partners for this project when Kavanaugh
16 approached him, through Cantor Fitzgerald, in early 2018. Spar had significant misgivings about
17 partnering with Kavanaugh based on Kavanaugh's prior conduct and poor reputation in the
18 entertainment industry, which Kavanaugh himself has acknowledged (see, for example, *Ryan*
19 *Kavanaugh Wants to Move on From Relativity: "That Guy Was Kind of an A-Hole,"* published in
20 *The Wrap* on June 5, 2019), but Kavanaugh convinced Spar to work with him by misrepresenting
21 that he had a turnkey solution for the real money exchange concept. Kavanaugh represented to
22 Spar that his solution included financing, a robust slate of film and other entertainment projects to
23 prove the model, and substantial marketing resources and expertise.

24 5. Between May 2018 and August 2018, Kavanaugh promised that he had substantial
25 financial commitments from third parties and that he would provide \$6 million to finance the
26 operating costs of the contemplated business model. In August 2018, Kavanaugh represented that
27 he would finance the entire business, which would far exceed \$6 million. Kavanaugh's
28

1 representations that he would provide full financing and a turnkey solution, among others, induced
2 Spar to pursue a potential arrangement with Kavanaugh. Those initial misrepresentations
3 included, but were not limited to:

- 4 • Kavanaugh's company, Proxima, was "actively involved and invested with film
5 financing vehicles and partnerships that immediately provide studio-distributed
6 commercial films for the HSX platform";
- 7 • Kavanaugh had hundreds of millions of dollars in capital commitments from
8 several significant finance sources that would enable a rapid build-out of the
9 developing business model;
- 10 • Kavanaugh controlled rights to at least 15 film development projects with
11 specific A-List talent attached and had "over 20 projects in active development";
- 12 • Kavanaugh had a partnership with Crowdfund X, a company that he claimed had
13 successfully completed more than 30 Regulation A IPOs, and that he was
14 personally involved in those successful Regulation A IPOs; and
- 15 • His prior business failures were not his fault but were rather the result of, among
16 other things, misconduct by the senior leadership of Elliott Management
17 Corporation, including Paul Singer, who Kavanaugh said engineered the demise
18 of Relativity in order to insert Singer's son into the company.

19 These representations were made in writing, including in a presentation prepared largely by
20 Kavanaugh, in May 2018, that details many of these misrepresentations made to Spar, and upon
21 which Spar reasonably and justifiably relied in deciding whether to partner with Kavanaugh.

22 6. Each of these representations was false when Kavanaugh made them. At the time,
23 Proxima was not, in fact, invested in the film financing vehicles as represented. It had virtually no
24 capital. It had no viable finance commitments – certainly nothing approaching the magnitude of
25 what was represented. Kavanaugh did not have the rights to all of the film projects that he listed.
26 He had no partnership with Crowdfund X. And Elliott Management Corporation was not
27
28

1 responsible for the demise of Kavanaugh's prior business ventures in the manner that Kavanaugh
2 represented.

3 7. Kavanaugh's detailed lies induced Spar to enter a one-sided non-disclosure
4 agreement ("NDA") covering specific non-public information provided by Proxima to Spar, and
5 to devote substantial time and effort between February 2018 and April 2019 to refining plans for a
6 movie exchange.

7 8. It was contemplated that Spar would be the CEO of the new exchange, dubbed ESX
8 (an acronym for Entertainment Stock Exchange), but he never executed any formal agreement to
9 do so or received any compensation or equity (which was contemplated) for his extensive efforts.
10 The terms of Spar's deal kept changing – from originally being a CEO charged with operating a
11 fully-funded venture, ultimately to being the person responsible for raising capital, in
12 approximately October 2018, when Kavanaugh's alleged financial commitments failed to
13 materialize.

14 9. Over time, as Kavanaugh withdrew and replaced one funding proposal after another
15 and each of his lies was exposed, it became apparent to Spar that Kavanaugh was operating
16 Proxima and its related entities as essentially a Ponzi scheme, using meager new investment
17 capital to satisfy old debts, diverting corporate funds for personal use (instead of paying his
18 employees and contractors), and manipulating the corporate books and records to conceal his
19 misrepresentations. Ultimately, in early May 2019, after Kavanaugh went behind Spar's back in
20 April 2019, to attempt to hire technologist and Spar's long-time friend Jacob Loveless and cut
21 Spar out of all ESX activity, Spar informed Kavanaugh in writing that he would no longer be
22 affiliated with Kavanaugh. Spar offered in writing simply to part ways with Kavanaugh and to
23 proceed with their respective business plans.

24 10. Kavanaugh, however, continued thereafter to engage in unfair and fraudulent
25 business practices, including defaming Spar to third parties by claiming falsely that Spar was
26 terminated and that Spar "stole" materials from him and seeking in other wrongful ways to block
27 Spar from lawfully pursuing Spar's movie exchange concept.
28

1 11. Based on Kavanaugh's fraud, unfair business practices, and other misconduct
2 described above and in more detail below, Spar seeks damages proximately caused by the fraud,
3 punitive damages against Kavanaugh for his malicious and willful fraud, and declaratory relief.

4 **THE PARTIES**

5 12. Plaintiff Elon Spar ("Spar") is an individual residing in Beverly Hills, California.

6 13. Defendant Ryan Kavanaugh ("Defendant" or "Kavanaugh") is an individual residing
7 in or around Los Angeles, California.

8 14. Plaintiff does not presently know the true names and capacities of the defendants
9 sued herein as Does 1 through 10, inclusive. Plaintiff will seek leave of the Court to amend this
10 complaint to allege said defendants' true names and capacities as soon as Plaintiff ascertains them.

11 **JURISDICTION AND VENUE**

12 15. Jurisdiction is proper under Section 410.10 of the California Code of Civil
13 Procedure and Article 4 of the California Constitution.

14 16. Venue is proper under Section 395 of the California Code of Civil Procedure in the
15 County of Los Angeles as Defendant Kavanaugh is an individual who is, and at all times
16 mentioned in this complaint has been, a resident of the County of Los Angeles, in the state of
17 California. Additionally, all acts and transactions giving rise to this action occurred in substantial
18 part in the County of Los Angeles, California.

19 **GENERAL ALLEGATIONS**

20 17. After earning his MBA from Stanford University Graduate School of Business in
21 1987, Spar worked at the leading financial services company Credit Suisse First Boston for almost
22 two decades, eventually as Managing Director and head of US equity block trading. In 2004,
23 Cantor Fitzgerald ("Cantor"), an innovative global financial services firm, hired Spar. Within two
24 years, Cantor promoted Spar to CEO of Europe and Asia, where he ran equity and fixed income
25 trading, investment banking and derivatives. In 2012, Spar became Chief of Staff for Cantor's
26 CEO Howard Lutnick. In 2014, Spar became the Executive Chairman and owner of TopLine
27 Game Labs, a developer of fantasy sports and social gaming services. He was on the Board of
28

1 Managers at his alma mater, Haverford College, and is a member of the American Jewish
2 University's Investment Committee. In short, Spar is a businessman with impeccable credentials
3 and a sterling reputation in his community. As Kavanaugh himself has described him, Spar is the
4 "most ethical and honest guy he's ever worked with."

5 18. Defendant Kavanaugh is a film financier whose reputation has been the subject of
6 substantial public reporting. One recent article in the Hollywood Reporter, "Is Ryan Kavanaugh's
7 New China Deal for Real?" discussed the "industry doubt" about Kavanaugh. "Every time
8 anyone lies in Cannes, Ryan gets a royalty," the article quotes Mark Gill, the president and CEO
9 of Solstice Studios as saying. See [https://www.hollywoodreporter.com/news/is-ryan-kavanaughs-](https://www.hollywoodreporter.com/news/is-ryan-kavanaughs-new-china-deal-real-1212502)
10 [new-china-deal-real-1212502](https://www.hollywoodreporter.com/news/is-ryan-kavanaughs-new-china-deal-real-1212502). Because of Kavanaugh's reputation for dishonesty, at the outset of
11 his interactions with Kavanaugh, Spar sought explanations for the demise of Relativity and was
12 met with Kavanaugh's assurances about alleged misconduct by Elliott Management.

13 19. After defaulting on its financial obligations, Kavanaugh's last company, Relativity
14 Media, filed for bankruptcy in 2015.

15 The History of the Entertainment Exchange Concept

16 20. In May 2016, Spar returned to Cantor from Topline Game Labels to work on a
17 project called Hollywood Stock Exchange, or "HSX." The idea behind HSX was to create a
18 virtual entertainment stock market, in which participants buy shares, with "Hollywood Dollars,"
19 of their favorite actors and new movies.

20 21. On behalf of Cantor, Spar began turning the concept behind HSX into a real money
21 exchange.

22 22. In December 2016, Cantor stopped paying Spar to work on the HSX project, but
23 Spar believed in the idea behind the project and wanted to continue moving forward with the
24 concept of a real money movie exchange.

25 23. For the next year or so, Spar worked on creating the Box Office Participation
26 Exchange ("BOPX"). Like HSX, BOPX would be an entertainment exchange. Spar considered a
27 number of different business models for the exchange, including movie futures, binary options,
28

1 and equities. Spar ultimately settled on a business model for BOPX that would be a real money
2 binary options exchange based on his conclusion that it would be the most efficient and effective
3 way to market.

4 Defendant Kavanaugh Begins His Involvement with the Entertainment Exchange Concept

5 24. In January 2018, Andrew Kramer ("Kramer"), the former COO of International
6 Distribution for Lionsgate Motion Picture Group, reached out to Cantor to find out with whom to
7 speak about HSX. Cantor referred Kramer to Spar.

8 25. Kramer told Spar that he was working as a "consultant" for a client who wanted to
9 buy into the HSX project outright or develop a joint venture.

10 26. Spar told Kramer that he could not consider entering into a business relationship
11 until Kramer disclosed whom he was representing. After conferring with his client, Kramer
12 disclosed he was representing Kavanaugh.

13 27. Despite misgivings given Kavanaugh's reputation, Spar decided to meet with
14 Kavanaugh and Kramer in February 2018.

15 28. Before getting into any details about ideas, concepts, or plans for future business
16 endeavors, Kramer and Kavanaugh asked Spar to sign a piece of paper stating that he would keep
17 the contents of their meeting confidential.

18 29. After the piece of paper was signed, Kavanaugh disclosed that he, like Spar, wanted
19 to create an entertainment exchange. Kavanaugh stated that he wanted to create a movie exchange
20 using Regulation A of the Securities Act ("Reg. A") that used real money, where the general
21 public could share in the profits. Through Reg. A, companies and producers could raise up to \$50
22 million with an initial public offering of shares for movies, television shows, music, games, and
23 Broadway productions on the platform. Then, the shares could be traded in the secondary market
24 like any other stock. This idea had been public knowledge in finance circles since at least as early
25 as 2012, when the Jumpstart Our Business Startups ("JOBS") Act was enacted into law by
26 President Obama to improve access to the public capital markets for emerging growth companies,
27 and finance professionals began to consider opportunities in the entertainment industry.
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

31. The NDA expressly covers only “Confidential Information” which is “all information disclosed by or on behalf of Proxima,” with the exception of the following:

32. Kavanaugh has released details publicly regarding an entertainment exchange, which Kavanaugh and Spar mutually decided to call ESX.¹ In fact, Kavanaugh, through his company Proxima, has now released a public statement regarding the film exchange concept, a concept that had been discussed in finance circles since at least 2012.

33. Given Kavanaugh's dismal reputation, Spar had serious misgivings about entering into any business dealings with Kavanaugh. However, Kavanaugh created an elaborate façade that made Spar believe Kavanaugh had funding and could provide a turnkey partnership for Spar and Cantor. This included conducting business from a lavish and large office space in the Fox Tower in Century City, referencing an ongoing business relationship with Mark Burg (the film producer, manager, including of the Saw movie franchises), and introducing Spar to Michael Lambert (the former Executive Vice President of HBO, former Vice Chairman of Village Roadshow, and head of Lambert Media Group), whom Kavanaugh described as a partner and with

8

1 whom Spar spoke. Kavanaugh also represented that Jim Wiatt and Ben Silverman were on his
2 advisory board, which created the illusion of legitimacy.

3 34. Indeed, in order to induce Spar to work with Kavanaugh, Kavanaugh made
4 numerous misrepresentations about his business dealings and the capital he had at his disposal, the
5 capitalization and funding of Proxima, the financial commitments he had from various finance
6 sources, and his ownership and/or access to intellectual property rights for potential projects.
7 These included Kavanaugh's representations that he, through his company Proxima, had over
8 \$500 million of committed film funds, including but not limited to the following:

- 9 • \$250 million from Fortress Investment Group and Apollo Global Management
10 LLC affiliates;
- 11 • \$250 million from Talaria Pictures, a film finance fund created through a
12 partnership between Kavanaugh, through Proxima, and Christopher Woodrow;
- 13 • \$250 million from technology platform MovieCoin that would expand to \$1
14 billion in later rounds;
 - 15 • Kavanaugh subsequently revealed (in or around August 2018) that
16 MovieCoin would not be involved, but Kavanaugh represented that
17 Proxicoin was committed to fill the \$250 million investment gap.
18 Kavanaugh further represented that Brock Pierce, a well-known crypto
19 investor, had committed to have Block.one, a \$4 billion crypto fund in
20 which Pierce was a founder, fund the entirety of the \$250 million
21 Proxicoin investment.
 - 22 • Kavanaugh also represented that Mike Novogratz, a billionaire investor
23 and head of crypto investment fund Galaxy, was also committed to
24 invest. Kavanaugh later represented that the money was not formally
25 committed but instead only "soft circled."
- 26 • Kavanaugh's representation that he had rights to approximately 30 film projects,
27 including Limitless 2 and the Atomic Blonde prequel, which he orally
28

1 represented were ready to be listed on the platform. On information and belief,
2 Kavanaugh does not control the rights to Limitless 2 or the Atomic Blonde
3 prequel, and there were no scripts for either project.

- 4 • Kavanaugh's representations that he would provide at least \$6 million to fund
5 ESX's operations for the first two years, and his subsequent commitment to fund
6 the entirety of the ESX project budget, which would far exceed \$6 million.

7 Spar reasonably relied upon these critical representations when he agreed to work with
8 Kavanaugh.

9 35. These representations, along with others, were false.

10 36. In actuality, Kavanaugh has been, and effectively is still, operating the Proxima,
11 Proxicoin and ESX "businesses" as a Ponzi scheme: Kavanaugh seeks new investor money to
12 cover existing obligations and does not use contributed funds as promised.

13 37. Based on recent press releases, it is clear that Kavanaugh's misrepresentations have
14 gone public and that Kavanaugh is now, on information and belief, inducing others to consider
15 investing in his scheme based on similar misrepresentations.

16 Spar Works to Further the Entertainment Exchange Concept

17 38. From early 2018 through about August 2018, the project that Spar and Kavanaugh
18 were considering pursuing would involve Cantor as a partner that would manage the regulatory
19 compliance obligations and issues and supply the operational and technological framework for the
20 real money exchange itself. In August 2018, however, it appeared that the parties would be
21 unable to agree with Cantor on a mutually acceptable governance model. At that point,
22 Kavanaugh suggested that Spar consider moving forward with him to pursue the movie exchange
23 project without Cantor, representing that he would finance the entirety of the business.

24 39. Beginning in August 2018, Spar began working on building the new project.

25 40. Spar began referring to the project as ESX, but no papers were ever signed making
26 him the CEO and the material terms of such an arrangement were never agreed.
27
28

41. Over the course of the next several months, Spar realized the true nature of Kavanaugh's business dealings and other misconduct.

42. In early May 2019, Spar took action to graciously disentangle himself from the contemplated business with Kavanaugh. A copy of the email in which Spar attempts to disentangle himself for the contemplated business is attached hereto as Exhibit B.

43. After Spar sent the email, Kavanaugh has wrongfully asserted that Spar's work product is Kavanaugh's property.

44. Spar has fully complied to the letter with the NDA. Specifically, Spar returned the non-public materials provided to him by Proxima on the subjects enumerated in the NDA.

45. Spar damages from the lost opportunity costs and out of pocket costs are substantial.

FIRST CAUSE OF ACTION
(Fraud)

46. Plaintiff Spar realleges and incorporates by reference the prior and subsequent paragraphs of this Complaint.

47. The allegations of this complaint stated on information and belief are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

48. As alleged in the General Allegations and in the following Causes of Action, Kavanaugh made representations of material fact.

49. These representations were in fact false.

50. When Kavanaugh made those representations, he knew the representations to be false and/or had no reasonable ground for belief the representations were true.

51. Kavanaugh made the representations with the intent to defraud and induce Spar to act as described in the General Allegations.

52. At the time Spar acted, Spar did not know the representations were false and believed they were true. Spar acted in justifiable reliance upon the truth of the representations.

53. Kavanaugh also concealed, failed to reveal, and actively suppressed material facts that he should have disclosed.

1 54. Kavanaugh also told Spar other facts, as described in the allegations, to mislead
2 Plaintiff and prevent Plaintiff from discovering the concealed or suppressed facts.

3 55. Kavanaugh concealed and/or suppressed these facts with the intent to defraud and
4 induce Plaintiff to act as described in the General Allegations. As described above, Kavanaugh
5 concealed and/or suppressed these facts with the intent to defraud and induce Spar to act. At the
6 time Spar acted, Spar was unaware of the concealed and/or suppressed facts and would not have
7 taken these actions if Spar had known these facts.

8
9 **SECOND CAUSE OF ACTION**
10 **(Violation of Cal. Bus. & Prof. Code § 17200, et seq.)**

11 56. Plaintiff Spar realleges and incorporates by reference the prior and subsequent
12 paragraphs of this Complaint.

13 57. As herein alleged, Kavanaugh willfully undertook unlawful, fraudulent, and unfair
14 acts to harm Spar, with knowledge of and disregard of Spar's rights, and with the intention of
15 benefiting Kavanaugh and/or others. Such conduct constitutes "unlawful," "unfair," and/or
16 "fraudulent" business practices in violation of California Business & Professions Code § 17200, et
17 seq.

18 58. Spar was harmed as a result of Kavanaugh's unlawful, fraudulent, and unfair acts
19 and business practices, and as a result of the acts, Kavanaugh has been unjustly enriched.

20 **THIRD CAUSE OF ACTION**
21 **(Declaratory Relief)**
22 **(Cal. Code of Civ. Proc. § 1060)**

23 59. Plaintiff Spar realleges and incorporates by this reference the prior and subsequent
24 paragraphs of this Complaint.

25 60. The allegations of this Complaint are likely to have evidentiary support after a
26 reasonable opportunity for further investigation or discovery. An actual and immediate
27 controversy has arisen and now exists between Spar and Kavanaugh regarding (a) the
28 enforceability, effect and scope of the NDA; (b) the duties and obligations, if any, relating to
Spar's and Kavanaugh's respective work product created during the time that they were working

1 together in light of Kavanaugh's fraud, failures to perform as promised, and other misconduct; and
2 (c) the rights, if any, the concepts surrounding the movie exchange ideas that the parties discussed.
3 Spar seeks a declaration of his rights under California Code of Civil Procedure Section 1060
4 regarding the foregoing.


5 61. A judicial declaration is necessary and appropriate at this time in order that the
6 parties ascertain their rights and obligations to each other and to avoid the hardship caused on the
7 parties by a protracted dispute and further delay.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff Spar prays judgment as follows:

- 11 1. For compensatory damages in an amount to be proved at trial;
12 2. Punitive damages for fraudulent misconduct;
13 3. A declaratory judgment on the issues described in the Second Cause of
14 Action above, specifically (a) that NDA is not enforceable and/or that it does
15 not apply to materials not specifically provided by Proxima to Spar; (b) that
16 none of the work product created by the parties is owned or controlled by
17 any other party; and (c) that Kavanaugh may not pursue development of the
18 movie exchange concept using the operating roadmap that was provided to
19 him by Spar based on Kavanaugh's fraudulent misrepresentations;
20 4. All costs and attorneys' fees associated with bringing this suit; and
21 5. Such other and further relief as this Court may deem just and proper.

22 Date: June 6, 2019

23 By: 
24 SIDLEY AUSTIN LLP
25 Chad S. Hummel
26 Amanda R. Farfel
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

[illegible]

- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

EXHIBIT A

**CONFIDENTIAL
NON-DISCLOSURE AGREEMENT**

This agreement (this "Agreement") is entered into by and between Proxima Media LLC ("Proxima") and Elon Spar ("Confidant"). Proxima wishes to discuss with Confidant certain business matters relating to certain business matters relating to Proxima and its affiliated entities (the "Proxima Matters"). The parties are entering into this Agreement because Proxima and Confidant agree that, in order for the parties to have meaningful discussions about and properly evaluate such Proxima Matters (the "Intended Purpose"), there is a need for Proxima to disclose to Confidant certain information that is to be used only for the Intended Purpose and to be protected from unauthorized use or disclosure.

1. Confidential Information

1.1 For the purposes of this Agreement, "Confidential Information" shall mean all information disclosed by or on behalf of Proxima, whether disclosed orally or in writing and whether or not specifically marked as "Confidential" or "Proprietary," including, without limitation, any and all information related to Proxima's and its affiliates' founders, formation, existence, financial statements and proposed business plan, motion picture treatments, screenplays or story lines, deal memos, production budgets, marketing budgets, policies and purposes, existing, proposed or potential technology, knowledge, products, services, clients, projects, markets and other business and financial information, and tangible materials containing any such information, whether machine or user read.

1.2 Confidential Information shall not include any information: (a) that is or subsequently becomes available to the general public other than through a breach of this Agreement by Confidant; or (b) that was in Confidant's possession prior to disclosure by Proxima or that Confidant has rightfully received or later receives from a third party without any restriction as to confidentiality or use, in each case only to the extent that Confidant does not know or have any reason to know that Confidant's possession of, or the third party's possession of, such information or information is in violation of an obligation or duty of confidentiality to Proxima.

2. Restrictions

Confidant shall disclose Confidential Information only to Confidant's employees and professional advisors on a need-to-know basis and shall require any recipients of Confidential Information to agree in writing that such Confidential Information is subject to the terms of this Agreement and to be used only for the Intended Purpose. Confidant shall only be authorized to copy, reproduce, summarize and/or distribute Confidential Information to the extent that such actions are in furtherance of the Intended Purpose. Confidant shall not disclose Confidential Information to any third party except to the extent that Confidant is compelled to do so in accordance with a judicial, administrative or other governmental order, or as otherwise required by law, in which case Confidant shall give Proxima reasonable notice prior to such disclosure and shall comply with any applicable protective order (or equivalent) obtained by or on behalf of Proxima. Confidant shall take reasonable measures, which such measures shall be at least as great as the measures Confidant uses to keep its own confidential information secure, to hold the Confidential Information in strict confidence and safe custody, to the extent it can be reasonably done, Confidant agrees to segregate the Confidential Information from the confidential information and the material of others to in order to prevent commingling.

3. Right and Remedies

All Confidential Information provided by Proxima shall remain the property of Proxima (as applicable), and Proxima's disclosure of the Confidential Information to Confidant does not grant any express or implied right to Confidant under Proxima's patents, copyrights, or trademarks. At Proxima's request, Confidant shall return or destroy, at Proxima's option, all originals, copies, reproductions and summaries of the Confidential Information and, if Proxima so requests, Confidant shall certify that it has returned or destroyed all such Confidential Information. Confidant acknowledges that monetary damages may not be sufficient remedy for unauthorized disclosure of Confidential Information and that Proxima shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

4. Limitation of Warranty and Liability.

Although Proxima will endeavor to include in the Confidential Information that Information known and believed by Proxima to be relevant to the discussions for the Intended Purpose, Confidant acknowledges that neither Proxima nor any of their representatives makes any representation or warranty as to the accuracy or completeness of the Confidential Information disclosed. Confidant agrees that neither Proxima nor their representatives shall have any liability to Confidant resulting from or arising in connection with the discussions for the Intended Purpose.

5. General Provisions.

5.1 This Agreement shall be governed by, and constructed in accordance with, the laws of the State of California without reference to choice of law doctrine. Any portion or provision of this Agreement that is deemed to be invalid, illegal or unenforceable will not affect in any way the remaining portions or provisions hereof in such jurisdiction.

5.2 Each party will promptly execute and deliver such documents and instruments and promptly do such other acts as are reasonably requested by the other party and are in the reasonable judgment of the other party necessary or appropriate to effectuate the purposes of this Agreement, including without limitation, executing and delivering documents and/or instruments that may be recorded or filed and cooperating in effecting such recordation or filing.

5.3 This Agreement shall be effective as of the later of the two dates set forth below. This Agreement constitutes the full and binding agreement of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements or understandings with respect thereto. This Agreement may not be amended or modified, and no waiver hereunder will be valid, unless authorized in writing and signed by both parties. Amendments of individual obligations of this Agreement shall not affect the other obligations. Any agreement between Confidant and Proxima concerning any specific transaction will exist only when that agreement is in writing and duly executed by the parties thereto. The parties agree that each party is acting independently from the other and nothing in this Agreement shall be deemed to make either party the agent of the other or create a partnership or joint venture between the parties.

5.4 This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, and all of the rights and obligations created by this Agreement shall survive any change and/or termination of the parties' business relationship.

In witness whereof, the parties hereto agree to be bound by the terms and conditions set forth herein and have caused this Agreement to be executed by their duly authorized representatives.

(CONFIDANT)

By: [Signature]
(Signature)
Name: Elia D. Spr
Title: _____
Date: 3/23/18

PROXIMA MEDIA LLC.

By: [Signature]
(Signature)
Name: John Fuen
Title: CEO
Date: 3/28/18

EXHIBIT B

From: Elon Spar <elonspar@gmail.com>
Date: May 7, 2019 at 7:03:01 AM PDT
To: rk@proxima.media

Ryan,

Good luck with your operation. I hope everything is okay.

As I told you on Thursday night, I was heading out of town for the weekend to attend my nephew's graduation from the University of Michigan. Over the past several weeks, I have had time to reflect on our long contemplated arrangement and have determined that, for a number of reasons, I am not going to proceed with any business venture or enterprise with you. The string of misrepresentations by you, your many broken commitments and promises, and your recent inappropriate overture to Jake Loveless have all led me to the conclusion that we must now go our separate ways.

I am happy to meet with you at your convenience to discuss.

Thank you.

Elon

Sent from my iPad